

JAN 20 2007

In The United States Patent and Trademark Office

IFW

Appn. No. 09/939,865

Filed: August 27, 2001

Applicant: Reuben Hertz

Title: **HANDHELD APPARATUS FOR DELIVERY OF PARTICULATE MATTER  
WITH DIRECTIONAL FLOW CONTROL**

Examiner/GAU: Robert Rose / 3723

Official Fax Number: 571 273-8300

Tel: (571) 272-4494

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OFFICE OF PETITIONS

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Signed: \_\_\_\_\_

Allen Hertz, Reg. No. 50,942

Date transmitted: January 20<sup>th</sup>, 2007

Attachments:

Transmittal Cover Letter (02 pages)

Supplemental Petition to Withdraw Holding of Abandonment (05 pages)

Petition to Revive based upon Unintentional Abandonment (05 pages)

Request for Refund (02 pages)

Credit Card Payment Form Indicating payment of \$750 (1 page)

Certificate of Transmission (this page)

**JAN 20 2007**

Application Ser. No. 09/939,865

Transmittal Cover Page

Appn. No. 09/939,865

Filed: August 27, 2001

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Title: **HANDHELD APPARATUS FOR DELIVERY OF PARTICULATE MATTER  
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Transmitted on: 2007, January 20<sup>th</sup>

Transmittal Cover Page

Mail Stop: **Office of Petitions**  
Commissioner of Patents and Trademarks  
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United States Department of Commerce  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Office of Petitions Fax Number: 571 273-0025

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SIR:

Applicant has submitted the following herein:

- Supplemental Petition to Withdraw Holding of Abandonment
- Petition to Revive based upon Unintentional Abandonment
- Request for Refund
- Credit Card Payment Form indicating payment of \$750
- Certificate of Transmittal

Applicant and Petitions Attorney agreed, the best method to expedite a resolution would be to submit a Supplemental Petition to the previously submitted petition dated September 05<sup>th</sup>, 2006 and a Petition to revive based upon unintentional abandonment under 37 CFR 1.137(b).

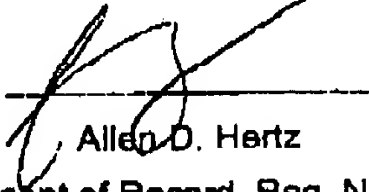
Petitions Attorney will initially consider the Supplemental Petition. Should the Supplemental Petition be granted, Applicant has submitted a request for refund of the \$750 fee associated with the Petition to Revive based upon Unintentional

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Transmittal Cover Page

Abandonment. Should the Supplemental Petition be dismissed, Petitions Attorney will then consider the Petition to revive based upon unintentional abandonment under 37 CFR 1.137(b).

Respectfully submitted,



Agent of Record, Reg. No.: 50,942

Please submit all correspondence concerning this patent application to:

Allen D. Hertz

Registration Number: 50,942



**31877**

**PATENT & TRADEMARK OFFICE**

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Boca Raton, Florida 33428  
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Cell: 561/716-3915

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**JAN 20 2007**

Application Ser. No. 09/939,865

Supplemental Petition to Withhold Abandonment

Appn. No. 09/939,865

Filed: August 27, 2001

Applicant: Reuben Hertz

Title: **HANDHELD APPARATUS FOR DELIVERY OF PARTICULATE MATTER  
WITH DIRECTIONAL FLOW CONTROL**

Examiner/GAU: Robert Rose / 3723

Official Fax Number: 571 273-8300

Tel: (571) 272-4494

Transmitted on: 2007, January 20<sup>th</sup>

**Supplemental Petition to Withdraw Holding of Abandonment**

Mail Stop: **Office of Petitions**  
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P.O. Box 1450  
Alexandria, VA 22313-1450  
Office of Petitions Fax Number: 571 273-0025

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SIR:

In response to the notice of DISMISSAL from the Office of Petitions dated December 29<sup>th</sup>, 2006 respective to the Petition filed on September 5<sup>th</sup>, 2006 and respective Notice of Abandonment Mailed 2006, August 30<sup>th</sup>, Applicant requests to reconsider the Petition to revive the subject application based upon the following:

Applicant submitted issues fees for the subject application and submitted the incorrect application numbers on June 7<sup>th</sup>, 2006. The Fees were due on July 28<sup>th</sup>, 2006. Applicant submitted issue fees for the subject application, but inadvertently submitted the fees on papers identified for a previously issued patent, US Patent Application number 10/704,517. Applicant believes that the USPTO had enough information and time to notify the Applicant that the fees were paid to the incorrect

Application Ser. No. 09/939,865

Supplemental Petition to Withhold Abandonment

Application, as the indicated application had already issued. Thus, Applicant would have had sufficient time to resubmit the fees to the correct application number.

Fees originally paid to 10/704,517	May 16 <sup>th</sup> , 2005
Application 10/704,517 issued	Oct. 4 <sup>th</sup> , 2005
Notice of Allowance Mailed	March 28 <sup>th</sup> , 2006
Fees paid for subject application	June 07 <sup>th</sup> , 2006
Fees received by USPTO	June 12 <sup>th</sup> , 2006
Fees due	July 28 <sup>th</sup> , 2006

Applicant respectfully notes that the USPTO had approximately 7 weeks to notify the Applicant of the fees collected against an incorrect application number, more specifically an application that had previously issued.

The USPTO has noted that the 10/704,517 file clearly indicates that an overage of fees were paid.

Applicant therefore believes there was sufficient information and time for the USPTO to notify the Applicant of the error in payment.

Applicant respectfully petitions to:

- 1) Withdraw holding of abandonment of Application No. 09/939,865.
- 2) Apply the fees submitted on June 07, 2006 from Application No. 10/704,517 to Application No. 09/939,865.

Application Ser. No. 09/939,865

Supplemental Petition to Withhold Abandonment

Applicant earnestly believes that Applicant had previously submitted sufficient evidence that the payment was made in a timely manner (June 07, 2006) for a due date of July 28<sup>th</sup>, 2006.

Applicant respectfully requests the Office of Petitions reconsider this petition based upon the supplemental argument provided herein, transfer the issue fees from Application No. 10/704,517 to Application No. 09/939,865, and withdraw the holding of abandonment of Application No. 09/939,865.

### **CONCLUSIONS**

Applicant believes the submitted petition presents sufficient evidence that the Applicant made a bonafide attempt to submit the issue fee and respective publication fee for the subject application prior to the due date of July 28<sup>th</sup>, 2006 with sufficient time (7 weeks) to correct any errors.

Applicant respectfully requests the supplemental petition be granted and the abandonment of the subject application be withdrawn.

Applicant respectfully requests the issue fees currently credited to Patent application 10/704,517 be transferred to patent application 09/939,865.

Application Ser. No. 09/939,865

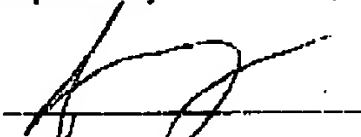
Supplemental Petition to Withhold Abandonment

Applicant has submitted a petition to revive the application based upon unintentional abandonment under 1.137(b) submitted in parallel herein as agreed with the Petitions Attorney.

Should this petition be granted, Applicant respectfully requests a refund of the \$750 fee submitted respective to the petition to revive the application based upon unintentional abandonment under 1.137(b).

If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, a telephone call to the Agent of Record (Allen Hertz) at (561) 883-0115 (Office)(Please leave a message) or (561) 716-3915 (Cell phone) is respectfully solicited.

Respectfully submitted,

  
Allen D. Hertz

Agent of Record, Reg. No.: 50,942

Please submit all correspondence concerning this patent application to:

Allen D. Hertz

Registration Number: 50,942



31877

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Application Ser. No. 09/939,865

Supplemental Petition to Withhold Abandonment

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**JAN 20 2007**

Application Ser. No. 09/939,865

Petition to Revive

Appn. No. 09/939,865

Filed: August 27, 2001

Applicant: Reuben Hertz

Title: **HANDHELD APPARATUS FOR DELIVERY OF PARTICULATE MATTER  
WITH DIRECTIONAL FLOW CONTROL**

Examiner/GAU: Robert Rose / 3723

Official Fax Number: 571 273-8300

Tel: (571) 272-4494

Transmitted on: 2007, January 20<sup>th</sup>

**Petition to Revive - Unintentional Abandonment Under 37 CFR 1.137(b)**

Mail Stop: **Office of Petitions**  
Commissioner of Patents and Trademarks  
Patent and Trademark Office  
United States Department of Commerce  
P.O. Box 1450  
Alexandria, VA 22313-1450  
Office of Petitions Fax Number: 571 273-0025

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**JAN 29 2007**

**OFFICE OF PETITIONS**

SIR:

In response to the notice of dismissal from the Office of Petitions dated December 29<sup>th</sup>, 2006 respective to the Petition filed on September 5<sup>th</sup>, 2006 and respective Notice of Abandonment Mailed 2006, August 30<sup>th</sup>, Applicant respectfully submits a petition to revive based upon unintentional abandonment under 37 CFR 1.137(b).

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. the required reply,
2. the required petition fee of \$750 (small entity) and
3. a statement that the ENTIRE delay was unintentional.

Application Ser. No. 09/939,865

Petition to Revive

1. Applicant respectfully petitions to revive the subject application based upon unintentional abandonment under 37 CFR 1.137(b).
2. Applicant has submitted the respective petition fee of \$750 (small entity) herein.
3. Applicant earnestly believes the abandonment for the entire delay in filing from the due date for the payment of issue fees and until the filing of a grantable petition was unintentional.

The following supports this statement:

- The application is considered abandoned based upon lack of issue fee payment prior to the expiration date of July 28<sup>th</sup>, 2006.
- Applicant submitted the payment for the issue fee on Jun 7<sup>th</sup>, 2006, well before the due date of July 28<sup>th</sup>, 2006.
- Applicant was notified of the abandonment via correspondence dated August 20<sup>th</sup>, 2006.
- Applicant responded via a petition filed on September 05<sup>th</sup>, 2006.
- The decision on the petition was mailed on December 29<sup>th</sup>, 2006.
- Applicant had a conference call with the Petitions Attorney on January 12, 2007.
- Applicant has submitted the subject Petition to revive in parallel with a Supplemental Petition in order to expedite a decision as discussed with the Petitions Attorney.

Application Ser. No. 09/939,865

Petition to Revive

Applicant has previously submitted payment for the Issue fees currently credited to Patent application 10/704,517 and respectfully requests the fees be transferred to patent application 09/939,865.

Applicant has submitted a supplemental petition in parallel to this subject petition to revive based upon unintentional abandonment. Applicant respectfully requests the Petitions Attorney consider the supplemental petition prior to considering the petition to revive. Should the Petitions Attorney grant the supplemental petition to withdraw abandonment, Applicant respectfully requests a refund for the \$750 petition fee submitted herein.

### **CONCLUSIONS**

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

1. the required reply,
2. the required petition fee of \$750 (small entity) and
3. a statement that the ENTIRE delay was unintentional.

Applicant has submitted a reply herein.

Applicant has submitted a credit card payment form indicating payment of the required petition fee of \$750 (small entity) herein.

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Petition to Revive

Applicant earnestly believes that the submitted statement properly states and provides supporting evidence that the ENTIRE delay was unintentional.

Applicant respectfully requests the abandonment be withdrawn based upon the submitted petition to revive based upon unintentional abandonment under 37 CFR 1.137(b). Applicant respectfully requests the issue fees currently credited to Patent application 10/704,517 be transferred to patent application 09/939,865.

If the Petitions Attorney believes that there are any informalities that can be corrected by a telephone call, Applicant respectfully solicits a call to the Agent of Record (Allen Hertz) at (561) 883-0115 (Office) or (561) 716-3915 (Cell phone) is respectfully solicited.

Respectfully submitted,



Allen D. Hertz

Agent of Record, Reg. No.: 50,942

Please submit all correspondence concerning this patent application to:

Allen D. Hertz  
Registration Number: 50,942

Application Ser. No. 09/939,865

Petition to Revive



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